

REMARKS

Upon entry of the present Amendment the Claims under consideration are 1-22, 24-38, 40-46, and 48-49. Independent Claims 1, 35, and 43 are amended hereby to emphasize that the fibers of the web are produced from a cold fiber draw unit (FDU). Support for the amendments is found at least at page 13, line 24. No new matter is added hereby. Entry of the amendment is requested to clarify the issues for appeal. Claims 23, 39, and 47 were previously canceled. The Detailed Action of 05 August 2005 will now be addressed with reference to the headings and any paragraph numbers therein.

Claim Rejections -35 USC § 112

Per paragraph 3 of the Detailed Action, Claims 2-9, 20-22, 24-38, 40-46, 48, and 49 stand rejected under 35 USC § 112 (first paragraph) as failing to comply with the enablement requirement. The Detailed Action contends that the specification does not teach a person having ordinary skill in the art how formation index values correlate with a basis weight or bulk of the a web because there are no discernible trends between the values.

This rejection is respectfully traversed, particularly in view of the remarks herein.

The Examiner questions why "differing" results are achieved and how a web is made to arrive at these values. The answer is: the webs having the claimed values are made as set forth in the specification. The values are derived from the formation index testing as set forth in the specification. Each formation index value is presented with respect to a particular web type and is presented in the alternative. The Examiner contends that the person of ordinary skill in the art of nonwoven textiles is unable to understand the recited values merely because the values do not follow a strict linear progression. Applicants respectfully disagree, and believe that a person of ordinary skill in the nonwoven textiles art has sufficient education and training to understand and to practice the presently claimed inventions from a reading of the specification.¹

¹ Again, as pointed out in Applicants' last response, concerning enablement, the person having ordinary skill in the art is given the necessary information for understanding and practicing the claimed inventions by the present specification at least at page 3, lines 5-22 (discussion of formation index value); page 8, lines 12-19 (definition of "formation index"); page 19, lines 21+ (description of formation index test procedure); and page 30, line 29 through page 32 (broad discussion of formation index); as well as the teachings of exemplary processes and materials for webs meeting the present claims at pages 10-15 and numerous

Applicants respectfully urge, as noted in their last response, that there is no statutory requirement within § 112 for discernible, or strictly linear (as is being required by the Examiner), trends within a patent application or a claim. There is no statutory requirement for an explanation of all underlying physics or chemistry of each claim limitation. There is no statutory requirement of predictability in the description and claims of an invention. The Examiner has cited no authority for the requirement he attempts to impose on the Applicants. Nor has the Examiner set forth a reasonable basis for the conclusion that the person of ordinary skill in the art could not practice the present invention from the descriptions given in the specification.

As the present rejections have no basis in law or fact, it is respectfully requested that the present rejections be reconsidered and withdrawn.

Per paragraph 5 of the Detailed Action, Claims 2-5, 20-22, 35-38 and 43-45 stand rejected under 35 USC § 112 (second paragraph) as failing to particularly point out and distinctly claim the invention because: "...it is unclear how a nonwoven material can have two or more different bulk values or two or more different basis weights. For example, claim 2 recites the web has a formation index above 37.6 when the web has a bulk of to about 0.1 inches, but the same claim also recites the web has a formation index above 32.03 when the web has a bulk of over about 0.1 inches. How can a fabric have two different bulk values?"

This rejection is respectfully traversed, particularly in view of the remarks herein.

The Claims to a material which list more than two basis weights or bulk values are recited in the alternative. In the complained of Claim 2, the transition phrase "or wherein" is interposed between the clearly defined alternative limitations further describing the material of Claim 1. Claim 2's description of alternatively limiting embodiments has no vague or ambiguous language which would give rise to a lack of understanding by a person having ordinary skill in the art. Therefore, the subject matter of each claim is particularly pointed out and distinctly claimed.

examples of webs produced according to the present invention starting at page 23. Discussion of contrasting webs (produced from a hot FDU) from the known art which do not meet the present invention is further included, such as at page 21, line 12, and Table 3, codes 14-20.

The Examiner has thus not set forth a reasonable basis for the conclusion that the person of ordinary skill in the art would not understand the claims. Other such Claims, now considered compliant, were placed in the permissible claim form of alternative members of a Markush group by Amendment A, per previous discussion with the Examiner. It is therefore respectfully requested that the present rejections be reconsidered and withdrawn.

Claim Rejections -35 USC §102/103

Per paragraph 8 of the Detailed Action, Claims 1-15, 19-22, 24-30, 34-38, 40-46, 48 and 49 are rejected as anticipated by, or in the alternative obvious over, Pike et al. (US 5,382,400, hereinafter "Pike").

This rejection is respectfully traversed, particularly in view of the above amendments and the remarks herein.

It is the contention of the Detailed Action that a material according to Pike would inherently meet (or make obvious) the limitations of the present claims. "Support for said presumption is found in the use of similar materials ... and in the similar production steps ... used to produce the nonwoven fabric."

Firstly, Applicants have herewith made explicit that which is clearly implicit from a reading of the specification, i.e., that for a bicomponent spunbond web to meet a formation index value limitation of the present claims, the fibers of the present invention are formed from a cold FDU, thus excluding hot FDU technology such as taught by Pike.

Further, as per Applicants last response, without implication as to the meaning or breadth of claims in Pike, the Examiner's presumption of obviousness or inherency of resultant properties due to "similar production steps" fails because no sufficient similarity in process of the present invention can reasonably be attributed to Pike. Applicants have taken great care within the specification to teach the public regarding the distinctions and differences of process and result between a Pike-type "hot FDU" production and the present invention.

Applicants specifically recite in the specification that Pike teaches a "hot FDU" production of the fibers and does not teach a cold FDU production of the fibers as taught and claimed for the webs of the present invention.² At page 28, line 6, Examples 14-20 of Table 3 are noted as "hot FDU bicomponent spunbond examples" to wit: "Example 14 was produced

² Applicants note that the structural differences of a web of the present invention and a web of Pike-type fibers are physically distinguishable by their formation index values. A formation index value is a physical measurement as set forth in the specification.

according to the above-described hot FDU bicomponent spunbond technology of Strack et al. (supra)” Each of Examples 15-20 thereafter further recite that they are “produced according to the above-described hot FDU bicomponent spunbond technology.”

At page 21, line 12, Strack et al, Pike and the family of hot FDU fiber production technologies are made known to the public as the basis of comparison to the present invention. At page 21, line 14, Applicants note:

Various descriptions of a bicomponent spunbond according to Strack et al. (supra) are taught in U.S. Patent Nos. 5,336,552 to Strack et al.; 5,382,400 or 5,418,045 to Pike et al., and 6,436,328 to DiPalma [emphasis added]

Further, at page 21 line 24, Applicants state:

The fabrication techniques of a bicomponent spunbond according to Strack et al. (supra), hereinafter “hot FDU bicomponent spunbond,” do not utilize the particular steps as taught herein to encourage the production and maintenance of maximum loft of the web. Further, the hot FDU will be recognized by the person having ordinary skill in the art as a limitation on fiber production which the present invention overcomes.

Thus, the Examiner’s conclusion that because Pike teaches crimped fiber webs “with a more uniform surface,” Pike’s (hot FDU) webs meet the claimed formation index values, is contrary to the entire context and teaching of the present application, is logically inconsistent,³ and is clearly incorrect.

It is therefore respectfully requested that the present rejections be reconsidered and withdrawn.

Claim Rejections -35 USC §103

Per paragraph 9 of the Detailed Action, Claims 16-18 and 31-33 are rejected as obvious over Pike in view of Sudduth et al. (US 5,770,531, hereinafter “Sudduth”).

This rejection is respectfully traversed, particularly in view of the above amendments and the remarks herein.

It is the contention of the Detailed Action that while Pike does not teach adding titanium dioxide to fibers, per the present Claims, Sudduth supplies this missing teaching.

3 Of course, Pike refers to surfaces more uniform than were known before Pike itself, and not surfaces known before the present invention.

Applicants respectfully submit that a *prima facie* case of obviousness has not been made because the Examiner's conclusion of Pike's inherent teaching, per the above discussion, has been refuted.

Double Patenting

Applicants acknowledge the provisional double patenting rejection as made by the Examiner at paragraph 11 of the Detailed Action. Applicants will address the substance of the double patenting rejection or file a terminal disclaimer at such time as allowable subject matter is indicated.

Response to Arguments

Applicants offer the follow observations on the Examiner's Response to Arguments discussion beginning at paragraph 13 (page 7) of the Detailed Action. The Examiner is still confusing predictability with statutory enablement and claim definition and imposing these predictability requirements on the present Claims, rather than judging the claims by the statutory requirements of §112.

The Examiner states:

"However, the enablement rejection is still upheld because the specification does not teach one skilled in the art how to manufacture the claimed product." (page 7, line 13)

This is incorrect because the Applicant clearly teaches a person having ordinary skill in the art how to manufacture a web meeting the claims, by using a cold FDU process such as set forth for examples 1-13. The Applicant also clearly teaches a person having ordinary skill in the art how to measure that web which is manufactured, to ensure it meets the limitations of the claims. The law does not require more.

"Additionally, the suggestion of discernible trends comes from Applicant's Specification. ... However, the claimed values do not follow any trend, despite Applicant's assertion in the Specification." (page 7, line 15)

The Examiner is clearly and impermissibly importing the language of the specification into the limitations of the claims.

"Whether a trend is required by §112 of the Statute or not, the lack of a trend with the claimed values is indicative that the values are merely random numbers created by chance." (page 7, line 20)

This is incorrect. The values are not random, but are derived from a measurement of the web according to the formation index value procedure set forth in the specification.

"If this [the values being random] were so, then it would be difficult for a person of ordinary skill in the art to practice the claimed invention with any certainty." (page 7, line 22)

As noted above, the values are not random but result from a defined measurement, and therefore the values are not random. Further, the Examiner appears to impose nonstatutory requirements of "low difficulty" and "certainty of practice" on the application and Claims, rather than judging the Claims by the statutory requirements of § 112.

Conclusion

In light of all the foregoing amendments and discussion, the Claims as presently presented are believed to be allowable over the art of record. A notice to that effect is earnestly solicited.

Request For Telephonic Interview

The Examiner is requested to call Applicants' attorney (per the provisions of M.P.E.P. § 713) to discuss any further problems or suggest solutions in defining the present invention in order to expedite the case towards allowance before issuing a further Office Action.

Favorable consideration is requested.

Respectfully submitted,



Roland W. Norris
Registration No. 32,799

Pauley Petersen & Erickson
2800 West Higgins Road; Suite 365
Hoffman Estates, Illinois 60195
TEL (847) 490-1400
FAX (847) 490-1403

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